

**I-601A Public Comments  
Summary of Suggestions - As of 9/19/12**

<u>Category</u>		<u>Comment and Response</u>	<u>Comment #</u>
<b>Form</b>	Part 1, Information About Applicant, Immigration or Criminal History Records	<p><b>Comment:</b> In response to the NPRM, many commenters suggested that USCIS allow individuals in removal proceedings to apply for provisional unlawful presence waivers if their removal proceedings have been administratively closed pursuant to ICE’s Prosecutorial Discretion (PD) initiative.</p> <p><b>Response:</b> DHS has amended the final rule to indicate that an individual in removal proceedings may apply for a provisional unlawful presence waiver if the individual’s removal proceedings are administratively closed and have not been re-calendared at the time of filing the Form I-601A . DHS is not limiting eligibility solely to individuals whose cases were closed pursuant to the ICE PD initiative. Any alien whose removal proceedings are administratively closed and has not been re-calendared at the time of filing the Form I-601A, can apply for a provisional unlawful presence waiver (Form I-601A). If USCIS approves the provisional unlawful presence waiver for an individual whose removal proceedings are administratively closed, the individual should seek termination of his or her removal proceedings <u>before</u> departing the United States to appear at the immigrant visa interview to avoid possible delays in his or her immigrant visa processing or risk of becoming ineligible for the immigrant visa based on another ground of inadmissibility. USCIS has updated the form and instructions accordingly.</p>	NPRM comments

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	<p><b>Comment:</b> In response to the proposed Form I-601A, several commenters indicated that the section of the form entitled “Immigration or Criminal History Records” was confusing and/or inaccurate.” Specifically, the commenters believed this section was inaccurate because it indicates that an applicant will be ineligible for a provisional unlawful presence waiver if the applicant answers “Yes” to certain questions relating to other possible grounds of inadmissibility. These commenters also believed the questions were too broad to lead to a firm finding of inadmissibility and should be amended to say that the applicant “may” not be eligible and that USCIS “may” deny the application if the applicant answers “Yes” to those questions. These commenters also identified specific inaccuracies and provided suggested edits to revise this section.</p> <p><b>Response:</b> DHS has incorporated many of the commenters’ suggested edits while rewriting this part of the form to clarify ambiguities and to correct inaccuracies. DHS also has revised the form and instructions to clarify that USCIS “may” find an applicant ineligible for a provisional unlawful presence waiver if USCIS determines that there is <i>reason to believe</i> the Department of State <i>may</i> find the applicant ineligible for a ground of inadmissibility other than unlawful presence. Regardless of whether USCIS approves or denies the provisional unlawful presence waiver, an immigrant visa applicant should present evidence of eligibility and any documents needed to establish admissibility to the consular officer at the time of his or her immigrant visa interview. The approval of a provisional unlawful presence waiver does not guarantee that the consular officer will find the applicant eligible for an immigrant visa. Also, the denial of a provisional unlawful presence waiver does not preclude the applicant from filing a new Form I-601A, in accordance with the forms instructions, with the required fees and any additional documentation that he or she believes might establish his or her eligibility for the waiver. The applicant’s case must still be pending with DOS, and the applicant must notify DOS that he or she intends to file a new Form I-601A. Alternatively, the applicant can file a Form I-601, Application for Waiver of Grounds of Inadmissibility with the USCIS Lockbox, after his or her immigrant visa interview at the U.S. Embassy or consulate abroad. . The purpose of these eligibility questions is not for USCIS to pre-adjudicate immigrant visa eligibility, but to limit the provisional unlawful presence waiver process to individuals whose only potential ground of inadmissibility is based on prior unlawful presence in the United States. All other potential grounds of inadmissibility and/or ineligibility need to be addressed with the consular officer during the immigrant visa interview.</p>	<p>AILA NIJC 0937 1276 2069 3667 3672 3679</p>

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	<p><b>Comment:</b> In response to the proposed Form I-601A, one commenter suggested that the form be enhanced by incorporating a detailed questionnaire, similar to that of Form I-601, aimed at uncovering other potential grounds of inadmissibility.</p> <p><b>Response:</b> DHS did not include a detailed questionnaire covering every potential ground of inadmissibility because the Form I-601A may only be used to waive unlawful presence. The purpose of the section entitled “Immigration or Criminal History Records” is to give applicants an opportunity to explain any possible immigration or criminal history records which USCIS may uncover during routine system and background checks. DHS will not make any changes to the form based on this comment.</p>	3629
Part 2, Information About Immediate Relative Petition and Consular Processing	<p><b>Comment:</b> In response to the NPRM, many commenters suggested that DHS allow individuals to cancel or reschedule their immigrant visa interviews in order to seek a provisional unlawful presence waiver.</p> <p><b>Response:</b> In response to these suggestions, DHS considered a number of criteria and restrictions to make the process operationally manageable without creating delays in processing of other petitions or applications filed with USCIS or in the DOS immigrant visa process. By including aliens who were scheduled for an interview prior to the publication of this final rule, the projected volume of cases could significantly increase and would create backlogs not only in the provisional unlawful presence waiver process, but also in adjudication of other USCIS benefits. The increased volume would also adversely impact DOS and its immigrant visa process.</p> <p>For these reasons, DHS will not expand the provisional unlawful presence waiver to include any individuals whose immigrant visa interviews were scheduled before the date of publication of this final rule even if the consulate or individual cancelled or rescheduled the immigrant visa interview after the date of publication of this final rule. USCIS will reject or deny any Form I-601A filed by an alien who was scheduled for an interview prior to the date of publication of this final rule, even if the alien’s interview is rescheduled after the date of publication of this final rule. DHS has updated the form and its instructions accordingly.</p>	NPRM comments

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	Part 3, Information About Qualifying Relative	<p><b>Comment:</b> In response to the NPRM, many commenters asked DHS to allow eligible applicants to show extreme hardship to a lawful permanent resident (LPR) spouse or parent, if applicable, since the statute authorizes a waiver of unlawful presence based on a showing of extreme hardship to a spouse or parent who is either a U.S. citizen or LPR.</p> <p><b>Response:</b> DHS has considered these comments but is not adopting the suggested change. As stated in the proposed rule, a primary purpose for creating the provisional unlawful presence waiver process is to reduce the separation of U.S. citizens and their immediate relatives. Focusing on hardship to U.S. citizens is consistent with permissible distinctions that may be drawn between U.S. citizens and aliens. It also is consistent with the Secretary's authority to administer the immigration laws and determine the most efficient means for effectuating the waiver process. See 77 FR at 19908.</p>	NPRM comments
	Other	<p><b>Comment:</b> In response to the proposed Form I-601A, one commenter suggested that when USCIS requires an interview for a provisional unlawful presence waiver, USCIS should allow the applicant to choose to either appear at a local USCIS field office for an in-person interview or have a video-conference interview with an adjudicator at a USCIS service center using appropriate technology (i.e. Skype).</p> <p><b>Response:</b> DHS reviewed these comments but did not adopt the suggestions. USCIS does not anticipate that many provisional unlawful presence waiver applicants will require an in-person interview. Also, USCIS does not conduct interviews at the NBC, namely because of the remote locations and the type of benefit requests adjudicated by that center, which are generally paper-based decisions. USCIS also will not conduct video interviews in lieu of in-person interviews when such interviews are required. Therefore, DHS will not make the suggested change to the form.</p>	3197
<b>Instructions</b>	Who May File Form I-601A?	<p><b>Comment:</b> In response to the NPRM, several commenters were confused about what it means to have a pending application for adjustment of status and did not understand why this would affect eligibility for a provisional unlawful presence waiver.</p> <p><b>Response:</b> DHS will not remove the restriction for individuals who have an application for adjustment of status pending with USCIS. Individuals who are eligible to obtain LPR status while inside the United States through the adjustment of status process and intend to pursue LPR status through that process do not need the provisional unlawful presence waiver. The provisional unlawful presence waiver is only valid for the purpose of seeking an immigrant visa outside the United States. To avoid confusion, DHS has updated the form instructions to clarify that this restriction only applies to individuals with a pending Form I-485, Application to Register Permanent Residence or Adjust Status.</p>	NPRM comments

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	<p><b>Comment:</b> In response to the NPRM, many commenters suggested that USCIS remove the restriction to the number of times an individual may seek a provisional unlawful presence waiver or modify it to allow re-filing of the provisional unlawful presence waiver application .</p> <p><b>Response:</b> DHS considered these comments and has changed the final rule to reflect that if an individual’s provisional unlawful presence waiver request is denied or withdrawn prior to final adjudication, the individual may file a new Form I-601A, in accordance with the form instructions, with the required fees and any additional documentation that he or she believes might establish his or her eligibility for the waiver. The applicant’s case must still be pending with DOS and the applicant must notify DOS of his or her intent to file a new Form I-601A. Alternatively, the individual can file a Form I-601, Application for Waiver of Grounds of Inadmissibility with the USCIS Lockbox, after he or she attends the immigrant visa interview and after DOS conclusively determines that the individual is subject to other grounds of inadmissibility that would preclude approval of the immigrant visa. DHS has updated the form and instructions accordingly.</p>	NPRM comments
	<p><b>Comment:</b> In response to the proposed Form I-601A Instructions, one commenter suggested adding “child” as a qualifying relative for showing extreme hardship.</p> <p><b>Response:</b> DHS cannot adopt this suggestion because Congress limited the qualifying relationship for purposes of establishing extreme hardship to spouses or parents. DHS cannot change this statutory requirement.</p>	Email
General Instructions	<p><b>Comment:</b> In response to the proposed Form I-601A instructions, one commenter asked DHS to clarify in the Form I-601A instructions how the provisional unlawful presence waiver relates to children who benefit from the Child Status Protection Act (CSPA).</p> <p><b>Response:</b> DHS has added language to the Form I-601A instructions to make clear applicants will remain eligible for a provisional unlawful presence waiver as long as the applicants remain “immediate relatives” as defined in the INA, as amended by the CSPA. Thus, an aged-out child may still qualify as an “immediate relative” for purposes of access to the provisional unlawful presence waiver process as long as the child is classified as an immediate relative under the INA.</p>	3197

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Specific Instructions	<p><b>Comment:</b> In response to the proposed Form I-601A Instructions, several commenters suggested adding a sentence in Part 5 of the instructions to explain that applicants may supplement their statements on extreme hardship and factors warranting a favorable exercise of discretion with an attached letter.</p> <p><b>Response:</b> DHS added the information as requested to the Form I-601A instructions.</p>	<p>AILA NIJC 3667 3679 3672</p>
	<p><b>Comment:</b> In response to the proposed Form I-601A Instructions, several commenters suggested adding a reminder in the instructions that applicants read the section entitled “Penalties” before the applicant signs the application.</p> <p><b>Response:</b> DHS added the reminder on the form and instructions as requested.</p>	<p>AILA NIJC 3667 3679 3672</p>
What Evidence Should be Submitted With the Application?	<p><b>Comment:</b> In response to the proposed Form I-601A Instructions, one commenter suggested adding a checklist to assist applicants with information on the types of documents and statements that should be submitted with the provisional unlawful presence waiver application.</p> <p><b>Response:</b> DHS added a separate section with a checklist as requested.</p>	3000
Other	<p><b>Comment:</b> In response to the proposed Form I-601A Instructions, one commenter suggested adding a warning regarding unauthorized practice of immigration law.</p> <p><b>Response:</b> DHS agrees with this suggestion. In 2011, USCIS started an initiative – the Unauthorized Practice of Immigration Law (UPIL) initiative – to educate the public about potential fraud and scams in the immigration context. USCIS has posted information about the UPIL initiative on its website. DHS encourages applicants to review the information at <a href="http://www.uscis.gov/avoidscams">www.uscis.gov/avoidscams</a>. DHS also has added a link to this website on the form instructions.</p>	3197